

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2788 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ISHWARDAS MEGHOMAL

Versus

COLLECTOR, JUNAGADH DISTRICT & ANR.

Appearance:

MR JR NANAVATI for Petitioner

MR MUKESH PATEL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioners, by this petition, to the order of the respondent No.1 dated 7th May 1985, annexure 'D' to this petition, and the order passed by respondent No.2 dated 21st February 1986, annexure 'E' to this petition.

3. It is not in dispute that the land admeasuring 7 acre, 17 Gunthas, situated at Veraval belonged to one society names Shree Navjeevan Cooperative Housing Society, Veraval. The said society made a request to the competent authority for grant of permission for use of the land for non agricultural purposes, which has been granted to the said society. Thereafter 'Sanad' has also been given in form No.'M' to the aforesaid society. The 'Sanad' was given on 27th April 1970. A copy of the 'Sanad' has been filed by the petitioner as annexure 'A' on the record of this case. Two of the conditions of the 'sanad', which are necessary for disposal of Special Civil Application are to be noticed. They are reproduced below:

(8) This land is to be used only for the construction of residential buildings. Injunction order is passed for any use other than this without prior permission of the Collector, under Section 48-4 of the Bombay Land Revenue Code.

(13) Construction work should commence within six months from the date of this permission. Should the applicant fails in doing so, will be liable for fine and non agricultural cess by way of penalty from him.

Similarly, clause 5(a) of the 'Sanad' provides that in case the grantee commits breach of any of the conditions, the Collector is empowered/authorised to impose fine and cess without affecting other penalty for which the applicant is liable under the Act and to continue the said land in the name of the applicant.

4. The petitioner purchased a part of the aforesaid land admeasuring 10527.85 sq.yards on 28th May 1979. The petitioner was given a show cause notice by the Collector, Junagadh District, annexure 'C' dated 17th December, 1984, captioned, "about breach/violation of condition on land admeasuring Acres 7, 17 Gunthas of Survey No.67, Veraval. The petitioner was called upon to show cause why the penalty should not be imposed for breach of conditions No.8 and 13 of the 'Sanad'. It is not in dispute that the construction had not commenced within six months from the date of grant of permission. It is also not in dispute that a portion of the said land has been given to Jamuna Circus on rent, meaning thereby it has been used for other purposes. After considering the reply to the show cause notice under the order dated 7.5.85, the Collector held it to be a case of violation

of the aforesaid conditions and ordered for recovery of 40 times non agricultural cess on the aforesaid land. It has further been ordered that the society should commence construction within six months from the date of the order and complete the same within one year. The petitioner has taken up this matter in revision application before the State Government but that revision application has been dismissed under the order dated 21st February 1986. Hence this Special Civil Application.

5. The only contention made by the learned counsel for the petitioner Shri J.R. Nanavati is that the petitioner has purchased the part of the land and the Collector could have made the petitioner liable for payment of the penalty to the extent of the land purchased. The order of the Collector to fasten liability upon the petitioner for payment of 40 time non agricultural cess upon the petitioner for the whole land is arbitrary. On the other hand, the learned counsel for the respondent has supported the orders of the Collector and revisional authority.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. It is true that the petitioner has purchased only part of the land, but on account of the conditions attached while granting non agricultural permission for the land aforesaid, the holder of the land has to abide by those conditions. These are the conditions attached to the land and whosoever purchases that land may be part thereof, is equally bound by those conditions. It is also not in dispute the construction on the land aforesaid has not been started within the stipulated period and it is also not in dispute that a portion of the said land was given on rent to Circus. It may be an internal matter in between the petitioner and its predecessor in title how they have to bear out the amount of penalty imposed. But only on this ground, the penalty imposed cannot be set aside. It is a penalty for breach of conditions subject to which permission for non agricultural use has been granted and as such, the petitioner has to make payment of the said amount. There is no question of bifurcating or apportioning the amount of penalty in between the petitioner and its predecessor. I do not find any substance in this Special Civil Application and the same deserves to be dismissed. Order accordingly. This Special Civil Application is dismissed. Interim relief, granted by this Court, stands vacated.

8. However, it is made clear that dismissal of this writ petition will not come in the way of the petitioner to claim proportionate amount of penalty from its predecessor in accordance with law. The petitioner is directed to pay Rs.2,000/- by way of costs of this petition. However, the petitioner is directed to deposit 50% of the costs in one of the funds maintained by the Hon'ble Chief Minister for natural calamities and the balance amount of Rs.1,000/- in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund. The petitioner shall deposit the aforesaid amount within a period of two months from the date of receipt of certified copy of this order and produce the receipt thereof on the record of this case. Rule discharged.

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(sunil)